

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
	:	
-v-	:	21-CR-100 (AKH)
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ROBERT LEMKE,	:	<u>ORDER DENYING</u>
	:	<u>MOTION TO EXCLUDE</u>
Defendant.	:	<u>TIME</u>
	:	
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Alvin K. Hellerstein, United States District Judge:

The government, by letter of March 29, 2021, asks for an adjournment of the conference set for April 5, 2021 to a date after mid-April that the government will request when defendant arrives in the district. ECF No. 14. The government asks also that time be excluded to that indefinite date. Both requests are denied.

At the conference of March 24, 2021, the government announced that it had not yet brought defendant to this district, and that it was not feasible that he be brought to a place where he could participate in the conference from his place of detention in the Northern District of California. I adjourned the conference to April 5, 2021, at 3:00 pm and, upon defendant's objection, and in light of the government's failure to bring defendant to this district for longer than 10 days since previously ordered, declined to exclude time. *See* 18 U.S.C. 3161 (h)(1)(F). I ruled that the government had not overcome the presumption against excluding time when transportation from another district is not effectuated within 10 days.

The government advised, in its letter of March 29, that defendant is "in transit" and is "expected to arrive in the District mid-April 2021." The government gives no explanation why a one-day flight should stretch to three weeks, and why it does not know to this day by when

defendant will be in this district, and on what precise date and time an adjourned conference date can be set. An adjournment is granted, but only to April 12, 2021, at 2:30 pm. The government will have to provide sufficient details and a fixed date and time to justify a further adjournment.

Time also is not excluded. The government asks me to exclude time “in the interest of justice” and under sub paragraph (h)(7)(B)(4) (time for defendant’s counsel to review evidence). The general term, the “ends of justice,” (h)(7)(A), cannot prevail over the specific requirement of 10 days to transport a defendant from one district to another, (h)(1)(F). While I understand that there are difficulties that are presented in transferring a defendant from one district to another, the government has not shown that these difficulties in sufficient detail, or provided any evidence such as affidavits or declarations to support their request for the exclusion of time. And there has been no request by defendant’s counsel for time to review evidence. I cannot make the findings required by the statute to justify an exclusion of time.

Under the law, the defendant is entitled to a speedy trial. My job as the judge is to give it. If the government requires time to be excluded, it must provide specific justification for such exclusion.

SO ORDERED.

Dated: March 31, 2021
New York, New York

/s/ Alvin K. Hellerstein
ALVIN K. HELLERSTEIN
United States District Judge